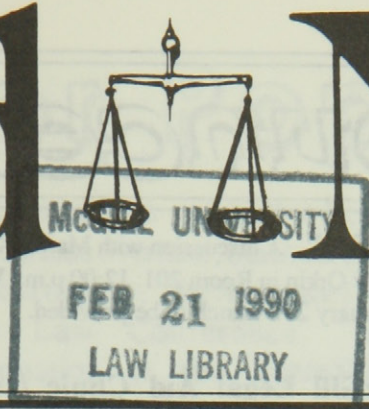


Quid Novi



Vol. X, No. 20

McGILL UNIVERSITY FACULTY OF LAW
UNIVERSITE MCGILL FACULTE DE DROIT

February 21, 1990
le 21 février 1990

Native Justice Notebook

by Michael Wilhelmson, LLB II

Natives make up only 5 per cent of the population in the prairie regions, yet they fill almost 30 per cent of the jail space in provincial institutions. In federal prisons in Saskatchewan and Manitoba, the percentage of native inmates goes as high as 60 per cent.

These startling statistics can produce only two reactions; the first is otherwise known as the 'classic approach': 'What do you expect? They're just Indians.' The second and somewhat more daring idea is that perhaps something is wrong with the external order imposed on native

Canadians.

There is an old Greek myth that democracy is possible because all people, regardless of the education or status, have a sense of *aidos* and *dike*. These 'arts' are what make society possible. *Aidos* is the sense of shame, or the desire to be respected by our peers. It is the source of community. *Dike* is the sense of justice and respect for the rights of others. It makes possible the settling of disputes through adjudication.

Aidos and *dike* are at the root of native demands for their own justice system. There is no question that natives have the *politike techne* or the art of politics, but it is one that

is uniquely their own. The natives who make up the prison populations include many in their number who are lost and disoriented by a foreign vision of community and justice.

Some of the effects of this disorientation were brought out during three panel discussion on aboriginal perceptions of the Justice system at last week's Native Conference here in the faculty.

Sam Stevens, Director of Native Legal Studies at UBC, noted that many legal concepts like "guilt",

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Juge Andrée Ruffo: Une volonté ferme d'aider les enfants

par Hélène Gagnon, BCL I

Le 7 février dernier, Mme le juge Andrée Ruffo est venue à la faculté pour donner une conférence dans le cadre des Ateliers Annie MacDonald Langstaff de La Femme et le Droit. Elle n'a pas caché son désir de voir des étudiantes s'intéresser un peu plus au rôle de la Chambre de la Jeunesse de la Cour du Québec et à la pratique des avocats pour les enfants.

Mme Ruffo a d'abord expliqué que les grandes lignes de la *Loi sur la protection de la jeunesse* et de la *Loi sur les jeunes contrevenants*. En vertu de la *Loi sur la protection de la jeunesse*, les enfants se

présentent devant le tribunal lorsque le Directeur de la Protection de la jeunesse soumet qu'ils sont en danger dans leur milieu : enfants battus, abusés sexuellement, etc. Cette loi procède principalement en deux étapes. Premièrement, il s'agit d'évaluer si l'enfant a réellement besoin de protection. Le juge doit prendre sa décision selon une prépondérance de la preuve. Et deuxièmement, le juge doit parvenir, en concertation avec les divers intervenants, à trouver une solution dans l'intérêt de l'enfant. Ainsi, dans ce cadre le juge n'est pas un arbitre. Les avocats des parents d'un côté et des enfants de l'autre n'ont pas de

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Announcements

Party - Party at Thompson House - Thursday November 22nd - 9:00 p.m. - Thrown for everyone by the 3rd and 4th years.

McGill Clinic Volunteers - Yearbook photo will be taken Wednesday, February 21 at 12:00 noon on the steps of OCDH. Don't you dare miss it.

LSA/AED: Elections - Opening of nomination period/Début de la période de mise en candidature: Mon/Lun 19 Feb/fév, 9:00 a.m.. Close of period/Fin de la période: Thur/Jeu 8 March/mars, 5:00 p.m. See Elections Box in LSA for forms. Les formulaires sont à l'AED dans la case "Elections". **ELECTIONS: Thursday/Jeu 15 March/mars, 10:00 a.m. - 4:00 p.m.** Neil Rabinovitch, Chief Returning Officer/Président des élections.

There is only one month to go!! **Last day at the Bookstore: March 23, 1990.** The book store hours and the last day of business will be posted by the Moot Court (at the usual place). No materials will be sold outside of the hours nor after the last day (March 23).

Legal Theory Workshop. Prof. Richard Epstein from the University of Chicago Law Faculty will deliver a lecture on "Two Conceptions of Civil Rights" on Friday, February 23 at 12:00 in Room 202. All students are invited to attend.

L.S.R. Lecture: "The Future of South

Africa". A discussion with Martin Kreigler and Andy Orkin in Room 201. 12:00 p.m., Wednesday February 21. Lunch to be provided.

McGill Legal Aid Clinic / Clinique d'aide juridique de McGill sera fermée pendant les jours de "Reading Week". Clinic staff are expected to fill their shifts on either end of this closure. Bonnes vacances.

Graduating Students - The Toronto firm of **McMaster Meighen** is looking for an articling student for the 1990-91 articling term. Interested students should send their application prior to February 23, 1990 to:

Mr. David Carbonaro
c/o McMaster Meighen
11th Floor, Merrill Lynch Canada Tower
Sun Life Centre
200 King Street West
Toronto, Canada
M5H 3I4

Native Law Conference - The *Quid Novi*, on behalf of the law students, would like to thank Prof. Cotler and Anjali, Christine, Murray and Andrea and all their many volunteers for all their efforts in organizing the successful and professional Native Peoples Conference.

Prof Cotler writes:

I would like to express my appreciation to the Student Conference Committee on Native Law and its principal organizers - Anjali Choksi, Christine

Deom, Murray Mollard and Andrea Morrison - for their initiative in conceiving, organizing and bringing about a most successful conference on Native Peoples and the Canadian Justice System on Feb. 7-8.

The Conference brought together an excellent representation of active peoples, legal scholars, and government representatives to discuss the theme: "Conflict, Self-Determination, and Native Peoples: The Search for Common Ground"; it raised public awareness of the problems facing Native Peoples in Canada; and it conveyed, clearly and effectively, the message that aboriginal rights issues must concern us all - that it is the Canadian justice system which is on trial."

Congratulations for this first rate effort! It was a pleasure to be associated with this initiative.

The Organizers of the Native Law Conference couldn't have organized without the participation of many many people. We would like to thank - Steve Drymer, Karen Capen, Darcy Edgar, Marie Normandin, Naomi Margo, Jay Spare, Stacy Zosky, Stéphane Ethier, May Chiu, Mundy McLaughlin, Julie Godin, Veronique Bélanger, Alison Hughes, Judy Robinson, David Platts, Catherine Rakush, Lynne Wilson, Ann Drost, Alison Wheeler, Adelle Blacket, Margo Siminovitch, Mandra Zweig, Viresh Fernando, Laurie Reiner, and Susan O'Brien.

Special thanks to Garth Wallbridge, Michelle Marsellus, Michael Bush, and Michael Wilhelmson.

Quid Deadline Announcement

Students wishing to place announcements for events held during the week of Monday, March 5th to Friday, March 9, 1990 must hand their notices in to the *Quid* before 12:00 noon, Wednesday February 21, 1990. Otherwise, you'll be all alone at your event...

People or Population

by Andrea Morrison, LL.B. II

While most Canadians have no hesitation in throwing mud at the apartheid system in South Africa, it might be appropriate to recall that when the South African government was scouting around for a model for the "homelands", they were 'inspired' by the Canadian reservations. Not something Canada wants on its resume, but let's face it: in spite of our commendable support of decolonization abroad, on the home front we are not quite so generous.

We don't have to dig too deeply to uncover the roots of the problem. The encounter between European settlers and Native Peoples was on an unequal footing, with Europeans setting down the rules and interpreting them with their own interests at heart. The result, as one Native scholar wrote, was "a trail of broken promises". Traditional ways of life were disrupted, leaving native communities depressed and dependent on the Canadian government.

There is no question that the relationship

between Canadians and Native Peoples needs a serious overhaul, but there is little agreement on how. The final panel of the Native Law Conference, "Self-Determination in the International Context, the I.L.O., and the Working Group on Indigenous Peoples", encapsulated the polar positions of some native activists and the Canadian government.

Simon McInnes (Policy Director, Self-Government Sector, Department of Indian Affairs and Northern Development) argued that Native Peoples are being presented with the political option of greater autonomy through the policy of self-government. Through the community self-government negotiations process, the Canadian government hopes "to work out practical new arrangements within the existing constitutional framework". However, Prof. Sally Weaver (Department of Anthropology, University of Waterloo) systematically ripped up the policy in point form - her basic theme being "same as it ever was".

At the other end of the political spectrum, Ken Deer of the Mohawk Nation Office argued that once Native Peoples are recognized as a "people" within the meaning of international law, and not as "populations" as they are now called by the Canadian government, the issue is no longer one of tinkering with the *Indian Act*. They are claiming the right to self-determination, a right which in principle is recognized by Canada as a member of the United Nations.

What is particularly interesting is that both sides are taking their arguments and justifications to the international community. Joe Sanders (Legal Advisor to the Assembly of First Nations) noted that the success of aboriginal claims is no longer limited to the concessions made by the Canadian government - international relations have an important role to play. And the situation is by no means stable. Recent events among Soviet minorities are among the many factors that promise to reshape how "self-determination" will be understood, a change which could have considerable impact on the status of Native Peoples.

Delta Theta Phi Update

by David Butts, BCL IV

I would like to take the time to thank those of you who responded to the *Quid* article of Feb. 7th. The membership drive for Delta Theta Phi continues and we welcome your support. The plans for "BALDERDASH II" are moving right along. Here, as promised, is a brief explanation of the rules of the game.

Balderdash is an event based on a popular word game. In our version of the game a panel of 'experts' is chosen from the Montreal literary/artistic/??? communities. Each of the panelists is

provided with an obscure word (Do you know the meaning of 'samongonka'?), but only one of them is given the correct definition. The others are asked to make up a definition in an attempt to bluff the judges. This is where the fun starts. The 'judges' will be the members of the audience. The learned members of the faculty (students and professors alike) are asked to vote on what is considered to be the correct definition. A show of hands determines the winner.

The event is scheduled for Wednesday March 7th, during the afternoon free period. Admission will be \$1.00 (less

than the price of a coffee and a stale doughnut!) and as was the case last year, all proceeds will be donated to the "Skit Night" committee.

Prof. Scott captured the title last year in an exciting 'bluff-off' with Bill Miller, a local practitioner. At least two celebrities have confirmed as panel members. Albert Nerenburg (Gazette columnist) and Tommy Schnurmacher (columnist, radio personality and general bon vivant) have graciously accepted our invitations to participate. Others have been contacted. See future editions of the

Cont'd on p.6

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Coin des SPORTS Corner

by Jordan Waxman, Sports Coordinator

Women's Hockey - Tuesday 13th, Lynn: "Started off with a bang. Chantal scored in 1st 2 minutes" Kept up good fight. Special game: 2 penalties: Tram, tripping; Jen, tripping. Lost 2-1, showed improvement. "Bunch of hacks!" Last Tuesday - won 9-1 romp. Chantal scored "many", Tam, Stacy, Kate, Liz; Pines afterward.

Ball Hockey "Leafs": 2 weeks ago won 10-3 against a bunch of stiffes. Last week-end some goon busted 3 of François' fingers in the Leafs' 9-3 win. Every forward but Bing scored, however he set up 3 beauties. 4-0 record.

Men's Hockey "Writs" finally broke 4 game skid against an 0-8 team: 4-2 win. Macko scored in dying seconds on empty net. J-P scored his 1st, Fell added another and Randy netted the winner on a breakaway. Last week: Though they lost, the game marked Chuck-O's 1st appearance as assistant Captain (though his "A" was upside-down).

"Solicitors": "We have Ali on our team", says Jim-O.

"A team" Tuesday 13th: Lost close game against Med. Gave up early 3-0 lead.

Tied it up but lost on the go-ahead. Goalie outstanding. Mike G. spectacular defence twisted ankle. Last week, 8-0 shutout. Sam & Darren were 2 of the scorers according to an unreliable source.

Soccer Tuesday 13th: "Outlaws" fell 2-1 at hands of best team in league. Mitch ('team-leading scorer') scored the only goal. 1-3 record. Last week lost 4-0. The goalie, Dirk, was at the airport at the time.

Basketball Sunday: Dave Butts led the charge with 23 points. Newcomer Paul Somma played excellently. In his first appearance last week he led a hot shooting "Jane's Lane" to yet another win. High scorer last week was J.W. with 7 (a true team effort). They are now 4-0. Who is Jane?

Broomball "Read'em and sweep": "We're not invited to the playoffs", according to Macko, despite a good 2-1-2 record. Lori (Tretiak) K. was out standing in the team's 3-3 tie against Phys. Ed.

Please, folks, I am not the amazing Kreskin. Drop off scores and highlights in my box. I would like to compile a list of all the law teams' regular season records for the Quid. Contact me. Cupid.

Next Week: Spotlight on Volleyball.

DOODLING SPACE

Mother Goose, Q.C.

by William Boulet, BCL III

By now it will have become patently obvious to even the most benighted amongst us that Law is not just another gambol in the heather (for those of you who are athletically or agriculturally inclined.) If anything, it demands a life-long commitment that would make Mother Theresa doff her habit and head back to Macedonia to take up clog hopping with the local wags. While some of us may have had the benefit of a legal parent to coach us through our formative years ("No, honey, your little brother isn't coming down with emphyseus, he has whooping cough"), most of us were not fortunate enough to be weaned not so much on the milk of human kindness as the pabulum of perpetuities. There can be no doubt, however, that a legal mind is formed in the cradle. Therefore, the author has devised a programme that will take the Law out of the ivory tower of universities and national firms and into the nursery where (as many of us have long suspected) it really belongs.

Mother Hubbard

Old Mother Hubbard (hereinafter referred to as "HUBBARD") went to, moved towards and generally progressed in the direction of the cupboard (as more fully described in Schedule A hereto "CUPBOARD") for the sole purpose and with the intention of getting HUBBARD's poor doggie ("POOR DOGGIE") a bone and/or bones (hereinafter individually referred to as "BONE" and collectively referred to as "BONES"). On or about the time HUBBARD reached the CUPBOARD or got thereto or arrived thereat, said CUPBOARD was bare and contained no BONE or BONES of any nature whatsoever including, without limiting the generality thereof, chicken bones, soup bones or ham bones, and POOR DOGGIE got no BONE or BONES and, for greater certainty, none ("NONE").

Mary, Mary Quite Contrary

"Mary, Mary quite contrary, how does your garden grow?" "With liens and

easements and profits à prendre and covenants all in a row."

Little Miss Muffet

I, the undersigned, Little Miss Muffet, resident and domiciled on Tuffet, having been duly sworn do hereby declare that I was sitting on Tuffet and partaking of my daily repast of curds and whey, as I am wont to do from time to time and was doing at the time in question and all times relevant hereto, when along came a spider, which spider then proceeded to sit down beside me and attempt to wrest possession of Tuffet from me. I was so frightened that I ran away.

MAY IT PLEASE THE COURT to declare that the undersigned the rightful owner of Tuffet and to restore Tuffet into the possession of the undersigned where it rightfully belongs.

MAY IT FURTHER PLEASE THE COURT to order said spider to cease and desist from frightening the undersigned and to remain away at all times when the undersigned is supping.

Dean's Hot Seat / Le Doyen sur la ligne de feu

by Anthony M. Fata, LL. B. IV

At the request of the LSA, on Wednesday February 7, Dean Yves-Marie Morissette agreed to answer student questions and concerns. Le Doyen a répondu à plusieurs questions, notamment celles des étudiants.

Many of the question were very relevant. In fact, the result of the Hot Seat is that many issues will go before various faculty committees for consideration. Among these are the issues of providing for class rankings to take into account deviations in class averages and the possibility of taking non-law credits after two semesters instead of the present three semester rule.

Plusieurs des questions ont provoqué

sensiblement la même réponse, c'est-à-dire "Oui, si on avait les ressources nécessaires" C'est malheureusement un réalité à laquelle la faculté doit faire face à tous les jours. A titre d'exemple, la possibilité d'avoir plus de programmes conjoints avec les autres faculté nécessitent? A titre d'information, la faculté offre deux programmes conjoints, soit Droit/M.B.A et Droit/M.S.W.

In response to questions concerning credit for non-law courses and for legal aid work, the Dean responded that in both these fields the Faculty was moving towards a more flexible policy. In respect of legal aid work, a proposition which will greatly improve the present situation is presently being considered by

a Faculty committee.

Quant au problème de la circulation d'air dans la faculté s'est engagé de voir à la possibilité d'installer des fenêtres qui s'ouvrent dans la faculté. De plus, il est fort possible qu'il y aura bientôt, une fontaine d'eau au rez-de-chaussée. Cependant, ces projets nécessitent l'approbation de "Physical Plant".

On behalf of the LSA, I would like to thank Dean Morissette, for agreeing to sit in the Hot Seat and I hope that this will become a tradition.

Should you have any questions, comments or suggestions, please do not hesitate to take them up with any of your LSA council members or simply leave a note in the LSA office.

Native Justice...

Cont'd from p.1

"lawyer" and "jury of one's peers" were alien to aboriginal peoples. Traditionally, native disputes were settled before a council of elders with solutions tailor-made for the victim and the community.

Native culture has also proven no asset in a courtroom. For example, the traditional respect for elders mentioned above is reflected in the tendency of young native men to lower their eyes in the face of authority figures. Unfortunately, this includes the judge. Stevens says this has often been misconstrued as evasion or deceit.

He says the result of this misunderstanding is a lack of confidence in the system. "It denies what they feel are their rights; it decides disputes in a way which is totally foreign to their thinking, using beliefs and values which are often totally opposite to their own."

Another speaker, Judge Rejean Paul of the Superior Court of Quebec, says the failure of the system is reflected in the growing native crime rate, including repeat offences. Our system is suffering from a shortage of native interpreters and case preparation time. Our courts are also unable to consider native social

realities, such as poverty and alcohol abuse, when meting out sanctions.

Paul added that the travelling-circus approach to justice has also fallen out of favour. This involves a court party of a judge, a couple of lawyers and some clerks making periodic pitstops in isolated communities. Besides the delays and case backlogs, the court party is no substitute for permanent centres of justice — even if this means a court house in a community hall. Otherwise, natives will continue to feel justice is something imposed from the outside.

Paul, who is also Chairman of the Cree-Naskapi Commission, advocates setting up native criminal courts presided over by native Justices of the Peace. These would apply the same laws as other courts and the accused would benefit from the same Charter safeguards. However, the enforcement could be more flexible and sensitive to native customs.

In the civil sphere, Paul says natives want greater access to alternative dispute mechanisms, including mediation. Some of the rules of evidence could also be relaxed to take account of native customs. For example, he says hearsay is much more important in the operation of native culture than it is in Western societies and should be admitted more often into evidence.

Aboriginal Title or Cleaning Out the Garage

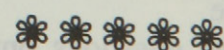
by Alison Wheeler, LLB II

The second panel of the Native Law Conference addressed the issues of aboriginal title and land claims. The panel didn't provide any neat and tidy answers, but it did suggest some new ways of thinking about these complex issues and of effectively bringing legal concepts to bear upon them.

Osgoode Hall's Brian Slattery described aboriginal title as akin to something you might find while cleaning out the garage - it looks familiar, but you can't quite place it, and you're not quite sure how it is supposed to work. This metaphor captures the difficulties that both academics and jurists have encountered in dealing with aboriginal title. (The Supreme Court took an ambiguously conservative position and called it "sui generis".)

The legal complexities mean that many land claims are an uphill battle. Mary Laronde, a member of the executive tribal council of the Teme-Augama in Northern Ontario spoke of their struggles in the Ontario courts to date. The Band lost last year in the Court of Appeal where it was held that their title had been unilaterally extinguished by a treaty they had never signed (the case is now in the Supreme Court). It seems as though the judges were cleaning out the garage...

The conference's lectures are being transcribed, but should you wish to take a more in-depth look at the issue of aboriginal title and land rights, see Brian Slattery's article "Understanding Aboriginal Rights" (1987) 66 C.B.R. 77. In addition, the Assembly of First Nations' book "Drum Beat" provides a non-academic on several unresolved claims.



P.L.O. - PAN-ETHNIC LIBERATION ORGANIZATIONS

Juge Ruffo...

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cause à gagner ou à perdre. Le juge et les intervenants doivent comprendre, selon Mme Ruffo, que c'est l'enfant lui-même qui doit sortir gagnant de l'intervention judiciaire. Le juge doit donc travailler pour l'intérêt de l'enfant sans toutefois mépriser les parents. La notion de l'intérêt de l'enfant a été précisée par la Cour suprême. Pour l'évaluer, il faut tenir compte de plusieurs facteurs dont le développement physique, psychologique, intellectuel de l'enfant. Il faut véritablement mettre l'enfant au centre de l'intervention et reléguer au second plan, s'il le faut, la famille et les droits des parents.

La *Loi sur les jeunes contrevenants* procède également en deux étapes. La première consiste à déterminer si l'enfant est coupable du délit qu'on lui impute. Le juge doit déterminer cela en appréciant les preuves et la culpabilité hors de tout doute raisonnable, comme dans un procès criminel d'accusé adulte. La seconde étape est de trouver une solution. La solution doit être choisie d'abord en fonction de la protection de la société et ensuite en fonction de l'intérêt de l'enfant (plus souvent adolescent).

Mme Ruffo s'est avérée bien intéressante particulièrement parce qu'elle n'a pas hésité à rapporter des cas récents qu'elle a eu à juger pour bien faire comprendre la situation à l'auditoire. Depuis un an et demi, deux fillettes, âgées de 6 et 8 ans, se présentent souvent devant Mme Ruffo. Leur mère est alcoolique. Lorsque cette dernière est en crise, elle devient extrêmement violente, malade et n'est plus en état de s'occuper de ses enfants. Les enfants vont au tribunal avec leur avocat pour demander un placement temporaire ailleurs pendant la durée de la crise. Et cela se répète, et se répète. Mme Ruffo avait l'impression de ne pas avancer dans cette affaire. Les enfants retournaient toujours à zéro. S'est ajouté à tout cela un aveu des fillettes à leur avocat d'avoir été abusées sexuellement

par un membre de la famille. Mais très récemment une des filles (8 ans) a demandé à parler au juge. Elle lui a dit de ne plus s'inquiéter. Elle avait compris que sa mère allait être malade encore longtemps et fréquemment. Elle a dit qu'elle savait dorénavant quoi faire. Sa voisine allait les accueillir, elle et sa soeur, pendant les crises de leur mère. Elles pouvaient aussi se confier à leur travailleuse sociale, à leur avocat et à leurs professeurs. Mme Ruffo estime que cette affaire est un cas type d'une intervention judiciaire réussie. L'enfant a été solidifié par le processus. L'intervention de la justice lui a donné des moyens de comprendre et de s'en sortir.

Selon Mme Ruffo, une intervention judiciaire réussie doit comprendre trois choses. D'abord la compréhension. Les avocats et le juge doivent écouter et comprendre le langage de l'enfant. Pas simplement ses paroles mais son langage en général incluant les rires, les pleurs, les maladies, etc. Ensuite, la confiance. Les enfants doivent avoir confiance en leur avocat et en leur juge. L'avocat doit défendre activement les enfants dès qu'ils lui démontrent leur confiance. Il ne faut pas décevoir cette confiance. Enfin, il faut l'accompagnement. L'avocat doit accompagner les enfants, les épauler continuellement, pendant des années s'il le faut. Lorsque ces trois conditions sont remplies, l'enfant fait du progrès.

Quant aux solutions, Mme Ruffo croit sincèrement que malgré le peu de ressources disponibles, il faut élaborer une solution appropriée pour l'enfant. Les solutions ne viennent pas toujours des gouvernements. Les meilleures sont parfois celles qui sont le plus près du milieu de l'enfant (comme l'aide d'un voisin par exemple). Par contre, Mme Ruffo reconnaît qu'actuellement la société québécoise a de gros problèmes côté ressources. Une croix a été mise sur la prévention: il n'y a pas de ressources à cet effet. Les signalements d'enfants en danger sont réduits au minimum: manque de ressources. Et même lorsque

le cas d'un enfant est signalé, un délai de 9 mois à 1 an peut s'écouler avant que sa cause ne soit entendue. Mme Ruffo croit qu'il est parfois trop tard.

Elle a rapporté le cas d'un enfant de 15 ans récemment entendu devant la Chambre de la Jeunesse pour avoir tenté de tuer son père. Depuis qu'il est tout jeune, cet enfant subit le climat et le tempérament d'un alcoolique. Il a été battu par son père et était toujours témoin de la violence que ce dernier commettait à l'égard de sa mère. A 7 ans, cet enfant s'est présenté à l'hôpital avec une marque évidente et profonde d'un talon sur la joue. Cet enfant a été retourné dans sa famille, sans suivi. Il a continué à être battu. A l'école, il était l'enfant difficile dont personne ne voulait. Il a été renvoyé. Désespéré, il a commencé à prendre de la drogue. A 15 ans, sous l'effet de la drogue, il en a eu assez de ce père qui n'a cessé de le détruire: il a tenté de le tuer. Mme Ruffo précise que la société savait depuis 8 ans que cet enfant avait de graves problèmes familiaux. Pourtant, rien n'a été fait. Notre conférencière a précisé qu'il lui est difficile de voir arriver ces jeunes devant elle, sans espoir, devenus si violents sous une influence néfaste, et d'avoir pour mission de les reconstruire. Ces situations sont fréquentes. Elle les impute en grande partie aux ressources dérisoires accordées à la protection des enfants. En répondant à une question portant justement sur le manque flagrant de suivi social et de d'autres ressources, Mme Ruffo a dit qu'elle croyait qu'elle se devait de dénoncer ces situations. "Si je me taisais, je serais complice de la souffrance des enfants" a-t-elle déclarée. Elle trouve déplorable que le système attende que ces enfants commettent des délits graves (tentative de meurtre ou vol qualifié) pour agir.

Avant de terminer, Mme Ruffo a accepté de commenter les accusations qui pèsent sur elle. Une enquête publique est présentement en cours et les résultats devraient être connus sous peu. Elle est

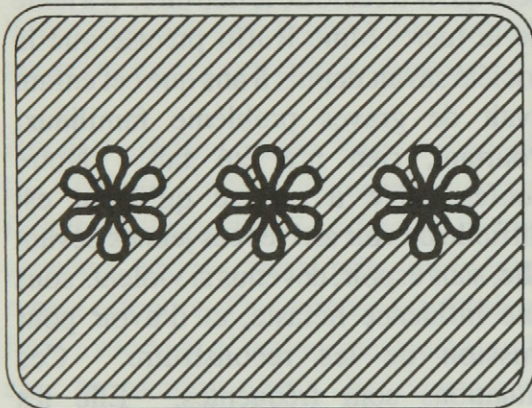
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Juge Ruffo...

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confiante d'agir correctement. Elle refuse de juger en fonction des ressources existantes. Elle persiste à croire qu'elle doit juger en fonction de la preuve et des deux nouvelles lois favorables aux enfants. A son avis, si un enfant a besoin d'une telle intervention sociale pour améliorer son sort, il faut s'arranger pour la lui trouver.

On peut critiquer Mme Ruffo. On peut croire qu'un juge ne doit pas envoyer un enfant au bureau du Ministre pour que ce dernier lui trouve un endroit où aller. On peut répéter qu'un juge se soit d'être impartial et ne pas dénoncer des politiques gouvernementales existantes. On peut. Mais Mme Ruffo a réussi à faire réaliser à l'assemblée que si personne ne dénonce la situation, les enfants continueront à être maltraités.



Delta Theta Phi...

Cont'd from p.3

Quid for further developments.

A letter has been sent to the Delta Theta Phi International Head Office in Ohio asking for contributions to 'Skit Night'. It is hoped that they will match the funds raised at Balderdash II. A regional meeting of the society is scheduled for March 3rd in Newark, New Jersey. We will be discussing the events surrounding 'Skit Night', including Delta Theta Phi's contribution, at that time.

If you have any questions please contact Geoffrey, Philip, Joy, Colin, Dino or myself - we'll be only too happy to answer them, if we can.

Communism, Brazil, and Responsible Journalism

by Jeffrey Rudolph, LL.B. III

I am often amused by the deep respect many people hold for the New York Times. Indeed, regardless of whether they actually read the paper, it is clear that people tend to exude a certain pride in merely having it in their possession. However, on closer examination, it becomes clear what the Times means by : "All the News That's Fit to Print".

For example, consider the Times' recent reporting on current developments in Czechoslovakia and Brazil. While the many articles have been factually accurate, most of the reporting on Brazil has suffered from critical elisions which result in readers receiving a distorted view of historical forces.

Practically all Times articles on Czechoslovakia mention the USSR's brutal suppression of rising freedoms in 1968. (Even articles on Czechoslovakia's vegetation will include something like: "...such flowers were the same ones trampled upon by Soviet tanks in ...") Obviously, reporting of the 1968 invasion represents recent developments in Czechoslovakia (and the USSR). However, very few articles on Brazil mention its brutal 1964 military coup; and even fewer refer to the crucial military, financial and political support provided by the US. And, naturally, as with Czechoslovakia, knowledge of the US-supported Brazilian military coup is fundamental to understanding Brazil (and the US).

Constant reference to Soviet abuses coupled with non-reporting of US abuses leaves readers with a false impression of superpower dynamics. Essentially, readers are left with a view of constant Russian intervention unequalled by US actions; and naturally, readers draw the

obvious conclusions as to the decency of each superpower. However, the more accurate picture is of two empires: one motivated by defense - indeed the USSR has not benefited commercially from its satellites - and the other by commerce. (Appropriately, as defensive concerns have decreased in the USSR, it has permitted reform. Yet, as commercial interests continue to dominate US foreign policy, its abuses remain.)

Moreover, unbalanced references to past events disable readers from appreciating the true nature of the so-called cold war. Essentially, the US and the USSR have not been on the edge of war. Rather, each has generally respected the other's sphere of influence, while using cold war rhetoric to justify repression. For example, the US never considered aiding the Czech reformers in 1968, and indeed no Western sanctions were taken over Czechoslovakia. And, likewise, the USSR, not wanting to antagonize the US, failed to assist Brazil before the US-supported coup. (However, one year after the coup, trade between Brazil and the USSR was running at over \$100 million a year.)

In order to provide Times' readers with some perspective the following article (appearing in two parts) will: (i) outline the economic evolution of Brazil; (ii) explain the motivations and effects of the 1964 coup/ and (iii) detail the role of the US in the coup.

Economic Evolution

The evolution of Brazil's economy can be crudely divided into three stages:

(i) From the 16th century until 1930, Brazil's economy was dominated by the colonial experience: raw materials and

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Communism, Brazil and Responsible Journalism

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agricultural cash crops were exported; manufactured and luxury goods were imported; and, a highly unequal social structure persisted.

(ii) From 1930 to 1964, mainly due to the world depression and ensuing collapse of the primary commodities market, policies of economic nationalism were pursued: the government subsidized industrialization; high tariffs protected domestic industry; foreign direct investment was encouraged (and indeed foreign multinationals came to dominate many dynamic sectors of finished good production); etc. Essentially, the government undertook a vast interventionist role in the economy from which it has never retired.

Distortions in this period's economic development led to serious balance of payments and inflation problems. Populist governments addressed these problems, not by slashing urban salaries and services, but by placing limitations on foreign capital; for example, by passing the 1962 restrictive profit repatriation law which was detested by foreign multinationals. Incidentally, other "crimes" of the Brazilian government, besides the 1962 Law, which stimulated US support for the coup, included:

- the nationalization of a subsidiary of ITT;
- the governments' neutral stand in foreign policy. (Goulart, the Brazilian president from 1961 until the coup, had opposed sanctions against Cuba. However, he supported the US during the Cuban Missile Crisis of October, 1962);
- the appointment of communists to positions in government agencies. (However, Goulart, a millionaire landowner and a Catholic who wore a medal of the Virgin around his neck, was not a communist);
- Goulart's preference for nationalist military officers over pro-US ones.

(Familiar with US history, Goulart was concerned about US-supported coups.)

It should be remembered that Guatemala's president, Arbenz, and Iran's prime minister, Mossadegh, had been "guilty" of similar crimes and consequently suffered similar coups in the early 1950's. As well, in the year following the Brazilian coup, Indonesia's president, Sukarno, also guilty suffered a similar fate.

(iii) The Brazilian military's response to the country's economic problems - inflation, labour unrest, reduced foreign investment, etc. - was the 1964 coup which ushered in the latest era of export-led growth (and violent repression). The primary American contact with the military conspirators, lead by Castel Branco, was Defense Attache Vernon Walters who arrived in Brazil after having been apprised the President Kennedy would not be averse to Goulart's overthrow. Essentially, the US and its preferred Brazilian officers could not tolerate Goulart's modest attempts at populist social reform.

Motivations and Effects

The Brazilian military, greatly influenced by the US through training programs, arms sales, etc., had been indoctrinated to consider the Left a dire threat to Brazil's capitalism and security. And therefore, the military agreed that it had to direct development (i.e. preserve capitalism) and repress "communists" (i.e. protect the state). As a result, to an extent previously unknown in Brazil, a merging of military and political roles occurred.

The clear winners of the military's actions were Brazil's elites - by 1970 the wealthiest 1 percent appropriated the same proportion of national income as the poorest 50 percent - and foreign multinationals, which benefited from favourable investment laws. (Not surprisingly, the 1962 profit repatriation law was repealed soon after the coup.)

The losers of the coup were the great bulk of the population who were not only subjected to economic misery despite great GNP gains - at least one-third of Brazilians, 45 million people, live in wretched poverty - but also to brutal repression. In the late 1970's Kenneth Erickson, a respected observer of Brazil, wrote the "Nearly every urban adult in Brazil today has a relative or acquaintance who has been tortured..." According to Amnesty International (1974):

"Pregnant women have been forced to watch their husbands being tortured. Other wives have been hung naked beside their husbands and given electric shocks on the sexual parts of their body, while subjected to the worst kind of obscenities. Children have been tortured before their parents and vice versa."

Such torture, along with systematic disappearances, death squad activity, brutalizing of priests, etc., was, in Orwellian fashion, labelled the "moral rehabilitation" of Brazil (It should not be surprising that, by 1969, the US Office of Public Safety had trained over 100,000 policemen in Brazil.)

As a result of favourable treatment of foreign business interests, post-coup Brazil has had intimate relations with the US; and indeed Brazil has proven a loyal ally. While the US has had to accept certain nationalist economic policies, desired by Brazil's elite, US corporations profit there and Brazil has aided US hegemony in the region. For example, in 1965, Brazil sent 1100 troops to the Dominican Republic in support of the US invasion which replaced democracy with dictatorship. And, in 1973, Brazil assisted the US-organized overthrow of the democratically elected Allende government in Chile.

(Part II of "Communism, Brazil and Responsible Journalism" will appear in the next issue of the *Quid*.)

Illiteracy: It Concerns Us All

by Janice A. Farrray

"Literacy is more than a survival skill, Yet as long as there are millions of functional illiterates in our country and as long as most of them are poor, we cannot forget that basic literacy is essential to economic and social well-being." (Richard W. Bailey & Robin M. Fosheim).

In an effort to bring the problem of illiteracy to the forefront of the public arena and to help boost the efforts of many organizations involved in the fight against it, the General Assembly of the United Nations declared 1990 International Literacy Year (ILY).

ILY's mandate is vast: (1) to increase action by governments to improve child and adult literacy; (2) to promote public awareness of the plight of illiterates; (3) to intensify public participation and (4) to strengthen solidarity among member nations in the fight to secure a literate world (UNESCO). This is not a temporary mandate as the main goal of ILY is to launch a decade-long plan of action.

Canada's Problem

Canada as a member of the U.N. and as a country plagued with the problem of illiteracy has a part to play in ILY as well. In a 1987 report commissioned by Southam News, it was found that five million people or 24% of the population of Canada were functionally illiterate. This is a devastating state of affairs with our relatively high standard of living in a country where supposedly so much emphasis is placed on education. High on the list were those who went to high school. Fifty percent of illiterates went to high school and one third actually graduated. This does not say much for the administration of our educational system.

Profile of an Illiterate

An all-encompassing result of illiteracy is 'ostracization' in that one is unable to fully participate in society. "In order to survive in a literate society, people need the skills of literacy - skills that allow one to complete a job application, use a telephone book, read newspapers, directions on food packages and more." (Delattre). These skills which most Canadians take for granted create a nightmare world for many Canadians. This nightmare world is the reality illiterates face in their everyday life. Illiteracy is usually referred to as the "hidden" problem since it is a socially unacceptable problem and therefore, like child molestation and other undesirable problems, society knows it is there but does not want to deal with its reality.

Your next door neighbour may be functionally illiterate but you won't know it from speaking with him/her. Some of the characteristics of a functional illiterate are (1) denying that poor reading and writing skills are responsible for holding him/her back; (2) watching a lot of television instead of reading; (3) when reading the newspaper, flipping the pages and going to the horoscopes and sports; (4) being trapped in dead-end jobs (5) going to movies, concerts or plays less frequently than literates.

Economic Costs

These very vague characteristics are what limit the participation of people plagued with this problem from sharing in the economic wealth of the nation. One of the findings of the Southam study was that literates had an earning power of 44% more than illiterates. This may well be the result of the dead-end jobs in which they find themselves without the prospects of advancing. The aggregate loss to the economy is that illiterates - when faced with unemployment - are

unable to seek a new job. Therefore they depend more on social benefits. Economic costs are inflated prices to cover up mistakes, tuition fees lost by illiterates, extra medical and worker compensation charges and many more.

Social Aspects and Its Legacy

Usually illiterates are content with their status and do lead 'normal' lives. The down side to this is that they do not seek to remedy their situation. Although it has many flaws, the educational system does provide for remedial courses at night and some agencies do provide services for illiterates. If one is afraid or ashamed to go to public institutions, one can also have in-house tutorial services. There is a correlation between poverty, education and illiteracy and the possibility of it being transmitted from generation to generation. Children from socially and economically deprived homes are more apt to be illiterate. If programs geared to fighting illiteracy are not directed to adults as well as children this wicked legacy will continue.

Literacy in the Home

Some of the findings of the Southam Report (1987) are that literates have a higher percentage remembering being read to as children, 68% versus 55%; the family owning a typewriter, 40% vs 15%; 25 or more books in the house, 77% vs 44% and receiving a daily newspaper, 77% vs 52%. The more access to information one has in the , the better the chance that one will not be illiterate, provided the information is used.

Some Remedies

Since governments have a major role to play, they should seek to remedy their correspondence with the public. In their communication with the general public, governments should try to make their

Cont'd on p.12

Don'tcha Wanna Know What You're Getting Into

by Jean-Paul Poitras, LLB II

Picture a Friday in early March, say March 9. Spring will be here. Flowers will be blooming (well, almost!). The January to March slumber which engulfs the library will be replaced by the sound of cellophane being ripped off from casebooks. The usual spring desire - to find the ultimate summary (preferably the handwritten Gisèle-type) - will seize us as we watch the shadow of exams creep up. Sheer panic will be near at hand. What to do?

Take a break. Sure - blow off March 9. The Faculty is actually sanctioning this course of action. It is not a holiday, nor another LLB II ski trip. Friday, March 9 is the date of the LSA Conference on Law and Lawyers in the 21st Century / L'avocat et le droit au 21e siècle.

The organizing committee is planning a one day, four panel conference. The conference's goal is to give students a fortune teller's perspective on lawyers and legal practice. Forecasts and predictions will abound, as academics and practitioners discuss legal education, society's view of the legal profession, women and the law and the practice of law in the future.

Madam Justice Wilson recently urged the introduction of female values into a judiciary permeated by a male approach to the world. For Justice Wilson, eliminating the male bias by expanding the female membership in the judiciary is the way to turn the facade of judicial neutrality into reality. The seventies and eighties saw an equalization of the sexes at law school, but Justice Wilson's solution is hindered by the barriers which women face once they enter practice. The panel on Women and the Law will feature practitioners and academics

eager to share their personal experiences. Rosalie Abella, President of the Ontario Law Reform Commission, will discuss her experiences in academia, practice, and the judiciary. Joanne Rémillard, Vice-President of Legal Affairs at Banque Nationale, will point out the advantages of choosing a career as in-house counsel. The panel's goal is to appraise the progress women have made and identify the directions necessary to equal participation in firms, academia, and the judiciary.

A second panel will focus on Legal Education. An article in Canadian Lawyer last year ranked McGill near the bottom of Canadian law schools. The authors chastized what they considered to be an overly theoretical approach. The University of Alberta, on the other hand, was praised for a curriculum emphasizing practical skills. McGill's academic approach doesn't seem to hinder the search for a job (especially for those with ambitions toward Supreme Court clerkships), nonetheless the criticisms raise questions as to what Canadian law schools are doing and what they should be doing. The panel on Legal Education will feature answers to these questions from Neil Gold, the Dean of Law at Windsor, and Ed Aust, a senior partner with Stikeman, Elliot.

Careers Day provided a glimpse of the wealth of opportunities besieging and often bewildering the average law student. Government, public interest, in-house counsel, and the traditional law firm are among the choices. The panel on Law Practice in the Future will feature a range of speakers who will provide information essential to career plans. Among the panelists will be Professor H.P. Glenn who will discuss the possibility of national and international bars, a sole practitioner who will describe

a career choice which most of us never consider, and Robert Jones, the President of Canadian Corporate Counsel, who will discuss trends in the area of in-house counsel.

The fourth panel will be an exercise in navel-gazing as panelists consider lawyers and their place in society. W.A. Bogart will offer empirical research concerning the putrid reputation enjoyed by the profession. Other speakers will discuss ethics and the lack thereof, self-regulation, and ways of improving the image of the profession.

Interested? March 9 - beats going to classes. Colin Chang, Marie Lussier, George Ahtipis, Neil Rabinovitch, Julia Hanigsberg and Jean-Paul Poitras make up the organizing committee. We welcome all interested, either at the organizing stage or as participants (time will be allotted for questions). Your support is greatly appreciated.

NOTES

Illiteracy...

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publications as comprehensive as possible. It has been found that government publications are often dense and unintelligible. In writing, they forget they are writing for the 'average man in the street'. They can also provide more funding and other forms of assistance to agencies and groups trying to combat this problem.

The educational system also needs to re-evaluate its programs and to put in place some mechanisms for combatting the problem since many of its graduates are functionally illiterate. These graduates seep into the labour force. Therefore employers have to try to combat this situation by allowing people the time to 'continue' the education process and maybe even instituting programs in the workplace. One such program is being looked into by the CSN here in Quebec. For more information on other programs contact Le Regroupement des groupes populaires en alphabétisation du Québec (277-9976).

Illiteracy affects all facets of our lives and therefore needs the attention of all. This year being ILY, let's start giving it our consideration. Whenever you can, lend a hand to one in need of overcoming such a deep-rooted problem. Let's hope that International Literacy Year will help bring the problem 'out of the closet' and into the forefront of society where it can be dealt with accordingly.

We Should Correct the Situation

by Zino Macaluso, BCL III

I, for one, am shocked and dismayed at the frequent mistatements made by law students. For instance, I heard someone say "Xenophobia" was the 'unreasonable fear or hatred of foreigners'. This is incorrect. Actually, the correct spelling of the word is "Zinophobia", from the Italian 'fear of Zino'. The English definition is as follows:

1. Fear of being Zino; having to be in the presence and/or company of a Zino.
2. A rare South American condition affecting the brain in which the victim equates highlighting with the quest for higher self-realization.
E.g.: "I highlight, therefore I am."

For instance, "Mass Appeal" is not something which is 'universally liked or admired'. The definition can be stated as follows:

1. That secret 'je ne sais quoi' which compels an individual to awaken a full 3 hours before God intended.
2. The reason why a hypothec is only an accessory real right (is this too difficult to

understand?) Let me repeat it. The reason why a hypothec is only an accessory real right.

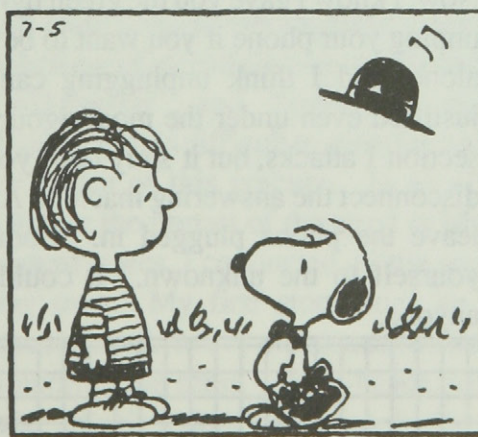
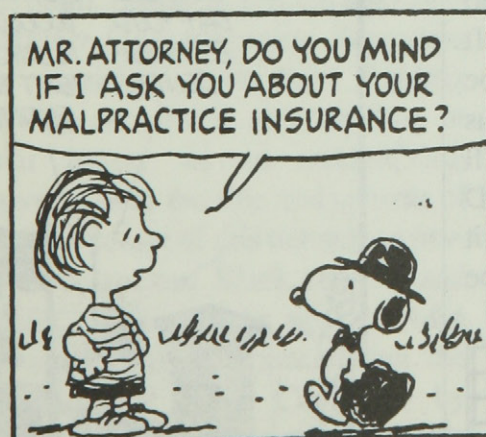
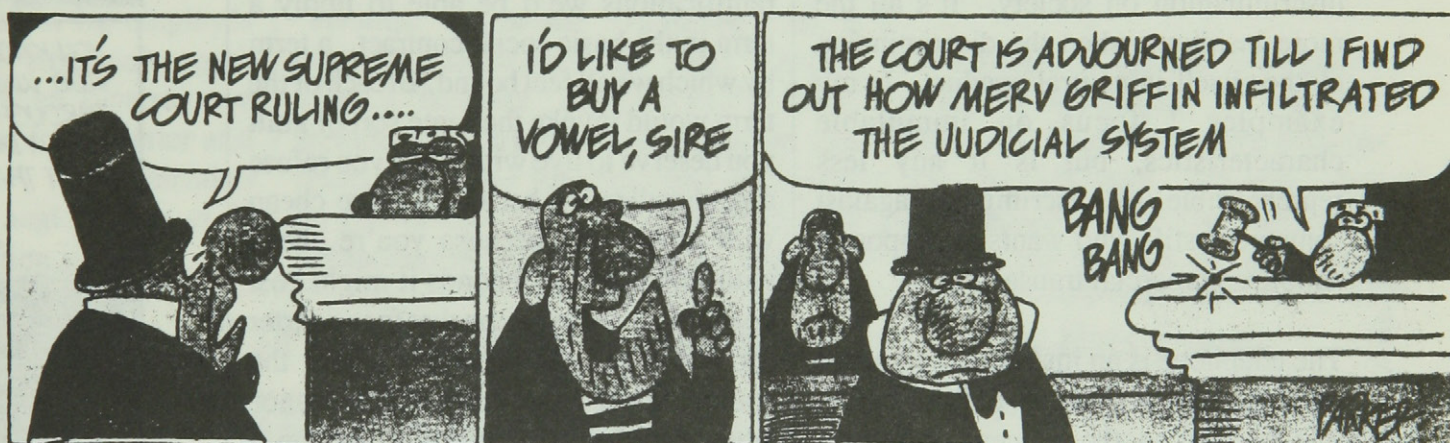
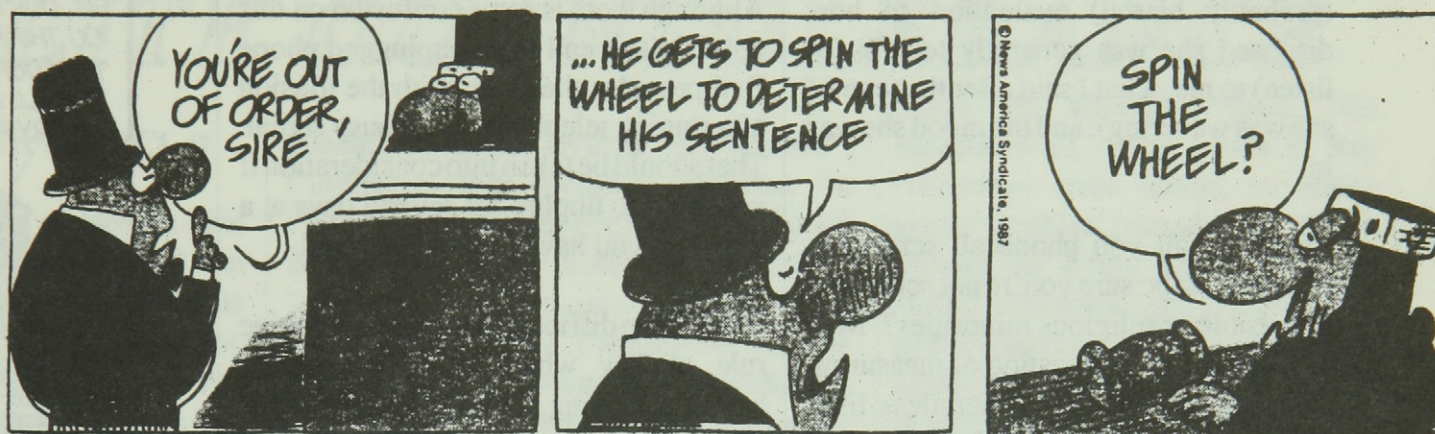
3. An oxymoron.

Furthermore, "Sklartheria" is definitely not a degenerative disease causing one to act like a lobster. It is, on the other hand, part of a religious ceremony in which the postulant is obliged to continually elevate his elbows in the air while tapping his fingers together. Of the nasty side effects to this ceremonial rite, the most pronounced is the fervent desire to grade as many students below B- in Evidence examinations without reprimand.

Finally, if one looks in the dictionary under "Gray matter" (also known as "Grey matter" from the latin meaning: student teach thyself), it is followed by Gray mold (also known as Grey mold). The mold does not matter, but neither does Grey. The point being: if a law student takes a course in which the word Grey is anywhere prominent, he will almost immediately notice a decrease in Gray matter until there is nothing left but mold.

So, if you or anyone you know misuses these words, please correct the situation now.





The New Discrimination Technology

by Ross Milliken, LLB III

I got a answering machine on the other end of the line, and I wondered, not for the first time, whether I was being screened out. The person I called was home, I guessed, and whether or not she would pick up and talk depended on her (probably biased) evaluation of how disposed she was generally to talk (or listen) to me, what I said after the tone (if she was wavering), and the mood she was in.

Come on, all you phonecall screeners. How can we be sure you're not screening out visible or religious minorities? Men or women? It's a question of measuring the value of your own merciless little liberty against the destructive impact of discrimination on society. It's all the more insidious when the discrimination clothes itself in neutral conduct. In my examples I focus on immutable characteristics, but is it any less reprehensible to discriminate against some poor stiff who wants to propose a simple commercial transaction?

The telephone is an instrument of public good. Isn't it the free flow of information that has led to the process of reform whereby the citizens of the communist block have begun to achieve a measure of political freedom?

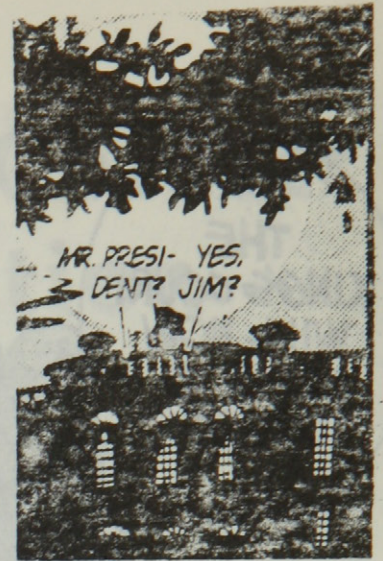
The Charter is writhing. Sections 15 and 27 are screaming in pain.

Listen, if you don't want to talk, unplug the phone. It adequately accomodates your desire to be left alone, which is a noble purpose, without discriminating among those who, for whatever banal or divine reason, want to talk to you.

Unplugging has the added benefit, for the temporary recluse, that it keeps the phone from ringing in the first place — a more impervious solitude. Depending on who you are, the risks are few. It's true, someone could die and you won't find out right away, but screening your phonecalls won't bring her back. Although there is some confusion on this point, with a call to an unplugged phone Bell provides the caller with the illusion of a ringing telephone, not a busy signal. That should be taken into consideration if you want to unplug for several days at a time and you have, say, a girlfriend.

It would be difficult to propose a positive rule of law which could effectively curtail screening. But I think so long as the community woke up to it's ramifications we'd be able to imply a term in the basic social contract, a term by which we all feel bound. Breach of the term would invoke the same sort of guilt you deserve to live with when you refuse a panhandler not because you're cheap with money but because you're cheap with time, the ten seconds it might cost you to reach into your pocket for a quarter (or a looney, panhandlers across the country must have done a little dance when they heard) that you'll toss on a table at home, cursing it for wearing out your pockets — a guilt which recognizes that for all your self-righteous chirping, your priorities are pretty ordinary.

Now, I know I gave you the green light to unplug your phone if you want to be left alone, and I think unplugging can be justified even under the most rigorous section 1 attacks, but it's my hope you'll disconnect the answering machine AND leave the phone plugged in. Commit yourself to the unknown. It could be anyone.

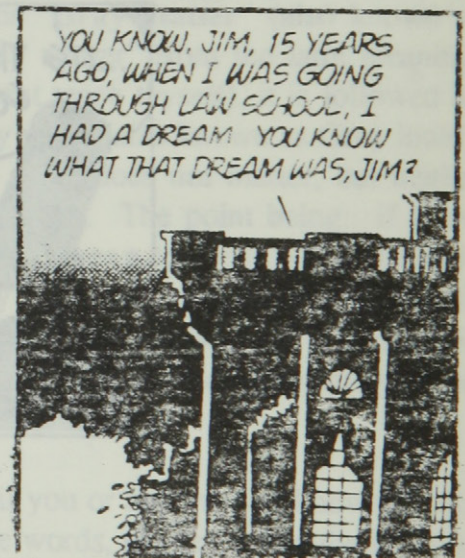


MR. PRESI- YES,
DENT? JIM?

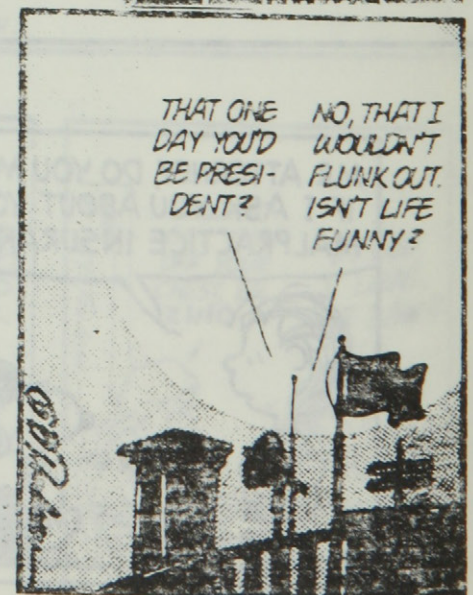


SIR, DON'T
YOU THINK
YOU OUGHT
TO CALL IT
A DAY?

I WILL, JIM. I'M
STILL JUST TRY-
ING TO TAKE
IT ALL IN...



YOU KNOW, JIM, 15 YEARS
AGO, WHEN I WAS GOING
THROUGH LAW SCHOOL, I
HAD A DREAM YOU KNOW
WHAT THAT DREAM WAS, JIM?



THAT ONE
DAY YOU'D
BE PRESI-
DENT?

NO, THAT I
WOULDN'T
FLUNK OUT.
ISN'T LIFE
FUNNY?